

REMARKS

Claims 1-48, 81 and 83 were previously pending in the above-identified Application. Claim 1 has been amended, and Claims 85-92 have been added. Claims 21, 22, 23, 25-48 and 83 have been canceled without prejudice or disclaimer. Claims 2-20, 24 and 81 remain unchanged. Accordingly, Claims 1-20, 24, 81 and 85-92 are presented for further consideration.

Response to Rejections of Claims 1-4, 6-11, 17-21, 24-28, 30-35, 41-45, 48, 81 and 83 under 35 U.S.C. § 102(e)

The Office Action rejected Claims 1-4, 6-11, 17-21, 24-28, 30-35, 41-45, 48, 81 and 83 under 35 U.S.C. § 102(e) as being anticipated by U.S. Pub. No. 2002/0178447 by Plotnick et al. ("Plotnick"). Applicants respectfully disagree and traverse these rejections, the characterization of the pending claims, and each and every implicit and explicit official notice. However, Applicants have amended Claim 1, and canceled Claims 21, 25-28, 30-35, 41-45, 48 and 83 without prejudice or disclaimer. Applicants reserve the right to pursue the previously presented and canceled claims in one or more related applications.

The present Application was filed on October 17, 2001. Plotnick was filed after the present Application on April 3, 2002, but claims priority to two provisional applications, U.S. Prov. App. No. 60/281,037 (hereinafter, the '037 provisional application), filed on April 3, 2001, and U.S. Prov. App. No. 60/329,992 (hereinafter, the '992 provisional application), filed on October 17, 2001. Therefore, Applicants respectfully submit that Plotnick is not prior art to the Application for any matter which is not disclosed or enabled by the '037 provisional application or the '992 provisional application. See M.P.E.P. § 706.02(f)(1)(I)(B) ("The 35 U.S.C. 102(e) date of a reference...is its earliest effective U.S. filing date...if the prior application(s) properly supports the subject matter used to make the rejection in compliance with 35 U.S.C. 112, first paragraph.") (emphasis added).

In addition, Applicants respectfully submit that Plotnick is not prior art to the Application for any matter supported solely by the '992 provisional application because the '992 provisional application was filed on the same date as the present Application.

Independent Claim 1

Claim 1 recites and the '037 provisional application fails to disclose, *inter alia*, "receiving a first signal from a viewer control interface indicating a viewer command to the audiovisual system, wherein the audiovisual system is responsive to the viewer command by

initiating a corresponding action selected from the group consisting of: fast-forwarding the displayed selected broadcast stream, pausing the displayed selected broadcast stream, and replaying the displayed selected broadcast stream; defining a viewer profile of the viewer of the display based on a content of the displayed selected broadcast stream, the viewer command indicating a reaction by the viewer to the content of the displayed selected broadcast stream, and a timestamp.”

The Office Action cites to the ‘037 provisional application, p. 21 § K, for disclosing the features, as recited in previously presented Claim 1, of “defining a viewer profile of the viewer of the display based on the viewer command,” “wherein the audiovisual system is responsive to the viewer command by initiating a corresponding action selected from the group consisting of: fast-forwarding the selected broadcast stream, pausing the selected broadcast stream, [and] replaying the selected broadcast stream.” However, this section of the ‘037 provisional application discloses that “a viewer profile is created by collecting one or more viewer interactions,” such as “how often and when the viewer skips the advertisement,” which is “analyzed to determine viewer preferences for the advertisement lengths.” *Id.* at ¶ 2, lines 4-7 (emphasis added). For example, this information may be used to “select advertisements that are about 10 seconds long.” *Id.* at ¶ 2, line 9. Since the viewer profile in the ‘037 provisional application is simply a collection of viewer interactions of “fast forward play” for the sole purpose of indicating the viewer’s attention span for advertisements, the viewer profile is not “based on a content of the displayed selected broadcast stream,” as recited by amended Claim 1 (emphasis added). In addition, the ‘037 provisional application does not disclose any other viewer interactions that may be useful in indicating the reaction by the viewer to the content of the displayed selected broadcast stream. Therefore, the ‘037 provisional application does not disclose “defining a viewer profile...based on a content of the displayed selected broadcast stream” and “based on...the viewer command indicating a reaction by the viewer to the content of the displayed selected broadcast stream,” as recited by amended Claim 1.

Furthermore, the ‘037 provisional application fails to disclose that the viewer profile is further based on “a timestamp,” as recited by amended Claim 1.

For at least the reasons stated above, Applicants respectfully request that the rejection of Claim 1 be withdrawn and that this claim be passed to allowance.

Dependent Claims 2-4, 6-11, 17-20, 24 and 81

Claims 2-4, 6-11, 17-20, 24 and 81 each depend, either directly or indirectly, from independent Claim 1. They are each believed to be patentably distinguished, *inter alia*, for the reasons set forth above in relation to Claim 1 and for the additional features recited therein and in any intervening claims. Accordingly, Applicants respectfully request that the rejections of Claims 2-4, 6-11, 17-20, 24 and 81 be withdrawn and that these claims be passed to allowance.

Response to Rejections of Claims 5, 12-16, 22, 23, 29, 36-40, 46 and 47 under 35 U.S.C. § 103(a)

The Office Action rejected Claims 5, 12-16, 22, 23, 29, 36-40, 46 and 47 under 35 U.S.C. § 103(a). Claims 5 and 29 were rejected as being unpatentable over Plotnick in view of U.S. Pat. No. 6,718,551 to Swix et al. ("Swix"). Claims 12-14 and 36-38 were rejected as being unpatentable over Plotnick. Claims 15, 16, 22, 23, 39, 40, 46 and 47 were rejected as being unpatentable over Plotnick in view of U.S. Pat. No. 5,774,170 to Hite et al. ("Hite"). Applicants respectfully disagree and traverse these rejections, the characterization of the pending claims, and each and every implicit and/or explicit official notice. However, Applicants have canceled Claims 22, 23, 29, 36-40, 46 and 47 without prejudice or disclaimer. Applicants reserve the right to pursue the previously presented and canceled claims in one or more related applications.

Applicants reiterate that, for the reasons expressed above, Plotnick fails to disclose, *inter alia*, "receiving a first signal from a viewer control interface indicating a viewer command to the audiovisual system, wherein the audiovisual system is responsive to the viewer command by initiating a corresponding action selected from the group consisting of: fast-forwarding the displayed selected broadcast stream, pausing the displayed selected broadcast stream, and replaying the displayed selected broadcast stream; defining a viewer profile of the viewer of the display based on a content of the displayed selected broadcast stream, the viewer command indicating a reaction by the viewer to the content of the displayed selected broadcast stream, and a timestamp," as recited in Claim 1. Furthermore, Applicants respectfully submit that Swix and Hite, either individually or in combination with Plotnick or each other, also fail to disclose, *inter alia*, these features of Claim 1.

Claims 5 and 12-16 each depend, either directly or indirectly, from independent Claim 1. They are each believed to be patentably distinguished, *inter alia*, for the reasons set forth above

Application No.: 09/982,652
Filing Date: October 17, 2001

in relation to Claim 1 and for the additional features recited therein and in any intervening claims. Accordingly, Applicants respectfully request that the rejections of Claims 5 and 12-16 be withdrawn and that these claims be passed to allowance.

No Disclaimers or Disavowals

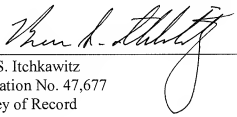
Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicants are not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicants reserve the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicants have made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: 12/4/09

By: 
Bruce S. Itchkawitz
Registration No. 47,677
Attorney of Record
(949) 760-0404

8080356